

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kevin Nicholas	Team: Team # 8	CCRB Case #: 200508592	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 07/24/2005 7:10 PM	Location of Incident: Times Square between 42nd Street & 7th Avenue subway station	Precinct: 14	18 Mo. SOL 1/24/2007	EO SOL 1/24/2007	
Date/Time CV Reported Mon, 07/25/2005 10:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/27/2005 3:46 PM		
Complainant/Victim	Type	Home Address			
Witness(es)	Home Address				
Subject Officer(s)	Shield	TaxID	Command		
1. POM Levon Holley	16034	923959	TB DT01		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. POM Timothy Goode	01700	923899	TB DT01		
Officer(s)	Allegation	Investigator Recommendation			
A.POM Levon Holley	Abuse: PO Levon Holley refused to provide his name and shield number to § 87(2)(b)				
B.POM Levon Holley	Discourtesy: PO Levon Holley spoke obscenely and rudely to § 87(2)(b)				
C.POM Levon Holley	Discourtesy: PO Levon Holley acted rudely toward § 87(2)(b)				

Synopsis

On July 24, 2005 at approximately 7:10 PM, ### § 87(2)(b) and his girlfriend, § 87(2)(b) entered the Times Square subway station at the corner of 42nd Street and Seventh Avenue. § 87(2)(b) entered the turnstile before § 87(2)(b) who began looking through her bag to find her Metrocard. An officer, PO1, approached § 87(2)(b) and spoke to her. § 87(2)(b) heard § 87(2)(b) clearly tell PO1 she “had a boyfriend” and “wasn’t interested.” PO1 and his partner, PO2, went through the turnstile and the area where § 87(2)(b) was standing. § 87(2)(b) spoke to PO1 about his interaction with § 87(2)(b) and requested his badge number. PO1 said to § 87(2)(b) “You don’t need that. Get the fuck out of here” (allegations A and B). At this point, § 87(2)(b) took out his camera phone and began lining up the phone to take a picture of PO Holley’s badge. PO1 immediately slapped § 87(2)(b)’s hand away (allegation C). § 87(2)(b) approached § 87(2)(b) and the officers walked away from the scene. Immediately afterwards, § 87(2)(b) went to Transit District 1 to file a complaint. § 87(2)(g)

Summary of Complaint

§ 87(2)(b) is a § 87(2)(b), 5’10”, 150-pound male with black hair who is a § 87(2)(b). § 87(2)(b) refused to provide his ethnicity to the CCRB. On appearance alone, § 87(2)(b) seemed to be either white or Hispanic. He provided an initial phone statement on August 1, 2005 (encl. 5 A) and appeared at the CCRB for an interview on August 4, 2005 (encl. 6 A-E).

On July 24, 2005 at approximately 7:10 PM, § 87(2)(b) and his girlfriend, § 87(2)(b) entered the subway station in Times Square at the southwest corner of 42nd Street and Seventh Avenue directly under Champs Store. As they were walking down the stairs, § 87(2)(b) saw two uniformed, black male officers, PO1 and PO2, walking down the stairs as well. Upon nearing the gates, § 87(2)(b) walked ahead of § 87(2)(b) and used his Metrocard to go through the turnstile. § 87(2)(b) then waited for § 87(2)(b) approximately 10-15 feet away, who had her bag propped up on front of the turnstile and was attempting to locate her Metrocard in her bag. PO1 approached § 87(2)(b) and said something that § 87(2)(b) could not hear. § 87(2)(b) looked up from her bag, turned towards PO1 and clearly stated that she “had a boyfriend” and “wasn’t interested.” PO1 appeared to respond but again § 87(2)(b) could not hear what he said. This exchange lasted approximately 30 seconds. Immediately afterwards, PO1 and PO2 went through the turnstile and approached where § 87(2)(b) was standing – approximately 10-15 feet from the turnstile. Both officers “definitely [seemed to] notice § 87(2)(b) and stopped. § 87(2)(b) approached PO1 and asked, “What’s going on?” PO1 responded, “Nothing. Get out of here.” In his initial phone statement to the CCRB, § 87(2)(b) quoted PO1 as responding, “Get the hell out of here.” PO1 appeared “very arrogant.” In his CCRB interview, § 87(2)(b) stated he spoke to PO1 simply because he “wanted to know what happened.” PO1 told § 87(2)(b) to get away from him and said, “Nothing happened.” § 87(2)(b) responded, “You didn’t just walk up to my girlfriend?” PO1 again told § 87(2)(b) to get away from him. § 87(2)(b) requested PO1’s badge number and PO1 said, “You don’t need that. Get the fuck out of here.” § 87(2)(b) still wanted to get PO1’s badge number so he took out his camera phone, held it out in front of himself and proceeded to line it up to take a picture of PO1’s badge. PO1 asked § 87(2)(b) what he was doing. § 87(2)(b) told PO1 he was taking a picture of his badge number. PO1 appeared visibly upset and said, “You don’t need it.” PO1 then “slapped § 87(2)(b)’s] hand away... with force.” PO1 used his right hand to slap § 87(2)(b)’s right hand, pushing § 87(2)(b)’s right hand across his body and out to his left side. § 87(2)(b) maintained his hold on the phone – the phone did not sustain any damage. As a result of PO1’s reaction, § 87(2)(b) did not again attempt to get a picture. In his initial phone statement to the CCRB, § 87(2)(b) quoted PO1 as asking, “What the fuck are you doing?” and stating, “Get the fuck out of here.” § 87(2)(b) “got upset” and told PO1 he didn’t need to touch him. PO2 began whispering to PO1. PO1 said to § 87(2)(b) “What are you going to do?” PO1 then did not say anything more. At this point, § 87(2)(b) approached and began yelling to § 87(2)(b) to step away and speak to her. § 87(2)(b) told § 87(2)(b) to “leave it alone.” § 87(2)(b) told § 87(2)(b) she feared PO1 was trying to physically provoke § 87(2)(b). Shortly thereafter, PO1 and PO2 left the scene and went down the stairs to the train platform. At this point, § 87(2)(b) left § 87(2)(b) at the station and went upstairs to find an officer. He was instructed to go to Transit District 1 where he filed a complaint. In his initial phone statement, § 87(2)(b) provided PO1’s shield number as 16034. PO Holley is also listed as the subject officer in the original IAB synopsis log

(encl. 3 A-D). § 87(2)(b) believed his interaction with the officers would have been visible to the token booth clerk.

Results of Investigation

Witness Statements – § 87(2)(b)

§ 87(2)(b) provided an initial phone statement to the CCRB on September 30, 2005 (encl. 7 A).

§ 87(2)(g), § 87(2)(b)

As § 87(2)(b) and § 87(2)(b) were walking towards the turnstiles, § 87(2)(b) noticed that PO1 was checking her out “but didn't pay any mind to it.” While § 87(2)(b) was trying to find her Metrocard, PO1 walked up to her and asked, “How could I get to know you?” § 87(2)(b) replied, “No, you know, you don't have to get to know me. I'm with my boyfriend and he's right there.” When she said this, § 87(2)(b) pointed to § 87(2)(b). PO1 did not offer any response and walked through the turnstile. Immediately afterwards, § 87(2)(b) walked up to § 87(2)(b) who was still on the other side of the gate, and asked her what happened. § 87(2)(b) stated she believed PO1 had hit on her. § 87(2)(b) appeared upset when he heard this – § 87(2)(b) said to § 87(2)(b) “‘He shouldn't be talking to you in uniform’ or something to that effect.” § 87(2)(b) approached PO1 and PO2. § 87(2)(b) could not hear any of the conversation between § 87(2)(b) and PO1. PO1 appeared visibly upset. When § 87(2)(b) lined up his camera phone, PO1 “pushed § 87(2)(b) s] hand” – “2-3 times... slapped his hand.” At this point, § 87(2)(b) had gotten through the turnstile and rushed over to § 87(2)(b). She said to § 87(2)(b) “Come on § 87(2)(b) let's go. Let it go.” § 87(2)(b) was fearful that the situation might escalate.

§ 87(2)(b) identified PO2 as a white male officer.

Attempts to Schedule § 87(2)(b) for an Interview

§ 87(2)(b) was contacted by phone on September 30, 2005 and at that time she provided an initial phone statement and an interview was scheduled for October 6, 2005, which she subsequently missed. Five additional calls were placed to § 87(2)(b) s phone number between October 19, 2005 and January 5, 2006. A ‘missed appointment’ letter was sent to her address on October 18, 2005 and ‘final please call’ letter was sent to her address on October 28, 2005. An email was sent to § 87(2)(b) on January 5, 2006 outlining the importance of § 87(2)(b) s in-person testimony and it was explained that § 87(2)(b) could be interviewed at their residence or her workplace if that better suited her schedule. § 87(2)(b) was contacted by phone on January 5, 2006 and the content of the above email was explained. § 87(2)(b) stated he would forward this message to § 87(2)(b) and explain the situation to her. Since that time, § 87(2)(b) has made no attempts to contact the CCRB. At no point has § 87(2)(b) ever made any attempt to contact the CCRB.

Attempts to Locate § 87(2)(b) s Complaint Report

A call was placed to the ICO at Transit District 1, Sgt. Colamesto, on January 5, 2006 and the undersigned requested a copy of § 87(2)(b) s complaint report at that time. § 87(2)(g) Sgt. Colamesto called back later that day and reported that he was unable to locate the report.

Field Visit to Times Square Subway Station

The undersigned traveled to the Times Square subway station at the southwest corner of 42nd Street and 7th Avenue, directly underneath Champs Store (encl. 9 A). The booth number at this location was § 87(2)(b). The turnstiles are in complete view from the booth - there are approximately 10 turnstiles directly across and only approximately 20 feet away from the booth. The Metrocard Vending Machines (MVMs) are directly to the left of the turnstiles. Overall, the area before the turnstiles is relatively small - approximately 35'x70'.

§ 87(2)(g)

Witness Statements – § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b), a § 87(2)(b) -old, 6'4", 270-pound black male with black hair, § 87(2)(b), appeared at the CCRB for an interview on February 10, 2006 (encl. 10 A-C). At the time of the incident he had a § 87(2)(b)

§ 87(2)(b)

On Monday, July 24, 2005 at approximately 7:10 PM, § 87(2)(b) was working § 87(2)(b) 42nd Street and 7th Avenue. § 87(2)(b) did not recall this incident whatsoever. Even when different aspects of the incident that were confirmed by all parties were described in great detail, § 87(2)(b) maintained that the incident did not sound familiar at all.

Officer Statements – PO Levon Holley

PO Levon Holley, a § 87(2)(b) old, 5'11", 180-pound black male with black hair, appeared at the CCRB for an interview on November 30, 2005 (encl. 12 A-B). On July 24, 2005, PO Levon Holley was assigned to the Times Square subway station – 1D18. He was working a 1500x2335 tour and was in uniform. His partner that day was PO Goode. His memo book entries (encl. 11 A-C) contained no mention of the incident.

On July 24, 2005 at approximately 7:10 PM, PO Holley and PO Goode entered the subway station at Times Square. They were patrolling the entire Times Square station that day. Upon approaching the turnstile, PO Holley "saw § 87(2)(b) rummaging through her bag for a few seconds. [PO Holley] approached her and asked her if she needed any help or assistance. § 87(2)(b) said no, she was waiting for her boyfriend." § 87(2)(b) was standing a little off to the side from the turnstile. PO Goode "was in the vicinity" but did not approach § 87(2)(b). PO Holley stated later on in the interview that § 87(2)(b) had responded, "No, my boyfriend is waiting for me on the other side." In his interview, PO Holley explained that he thought § 87(2)(b) might need help because of "the way she was frantically going through her bag." The first time PO Holley saw § 87(2)(b) was at the turnstile and she was alone at that time. At that point, PO Holley and PO Goode walked through the entrance gate. The entire interaction with § 87(2)(b) lasted "maybe three seconds." Immediately after entering the gate, PO Holley "was startled by something being placed within an inch, approximately, of my face. As I pushed the object and hand away, and got the person out of my personal space, I saw it's § 87(2)(b) trying to take a picture of me with a camera phone." PO Holley "didn't see § 87(2)(b) coming. All I [saw] was something... about an inch away from my face. So I moved his hand away." PO Holley indicated during his interview that he pushed away § 87(2)(b)'s wrist with an open hand. § 87(2)(b) told PO Holley he knew "detectives... people on the force." PO Holley was unsure what was happening at this point and soon afterwards observed § 87(2)(b) yelling to § 87(2)(b) to "leave [PO Holley] alone. He was just trying to help me." PO Holley assumed at this point that § 87(2)(b) was the boyfriend that § 87(2)(b) was referring to earlier. § 87(2)(b) did not say anything further to PO Holley.

§ 87(2)(b) never spoke to PO Holley before putting the camera phone in front of his face. PO Holley walked away from both of them. § 87(2)(b) never requested PO Holley's name and shield. PO Holley never addressed § 87(2)(b) with profanity. PO Holley never asked § 87(2)(b) how he could get to know her nor made any flirtatious remarks towards § 87(2)(b) whatsoever. § 87(2)(b) never motioned towards § 87(2)(b) when stating she was waiting for her boyfriend.

Officer Statements – PO Goode

PO Goode, a § 87(2)(b) old, 5'8", 200-pound, black male who is bald, appeared at the CCRB for an interview on December 6, 2005 (encl. 14 A-B). On July 24, 2005, PO Goode was working a 1500x2335 tour and his assignment was 1D-18, dual post Times Square. His partner was PO Holley and he was in uniform. His memo book entries (encl. 13 A-C) contained no mention of this incident. § 87(2)(g)

Upon approaching the turnstiles, PO Holley was a few feet ahead of PO Goode. PO Holley went into the system – PO Goode did not know if PO Holley went through the turnstile or the gate – and PO Goode first walked left over to the Metrocard Vending Machines (MVM) to look for swipers. PO Goode didn't remember seeing a female struggling with her card in front of the turnstile. PO Goode never saw PO Holley walk up to a female by the turnstile. When PO Goode walked through the service gate, between the turnstile and the MVMs, "a couple of minutes" later, he saw, from approximately 20-30 feet away, § 87(2)(b)

§ 87(2)(b) with his hand in [PO Holley's] face." PO Goode observed PO Holley "brush § 87(2)(b)'s] hand away." PO Holley simply moved § 87(2)(b)'s hand away. As PO Goode approached them, he heard § 87(2)(b) say, "I know a detective," and § 87(2)(b) walked away. When § 87(2)(b) walked away, PO Goode observed that he had been carrying a phone in the same hand. PO Goode could not recall if PO Holley said anything to § 87(2)(b). PO Goode could not recall ever asking PO Holley what had happened. Immediately afterwards, the officers walked down to the 7 platform. Shortly thereafter, the officers returned to the stationhouse and saw § 87(2)(b) there. An officer at the desk informed PO Holley that § 87(2)(b) was making a complaint because PO Holley had asked § 87(2)(b)'s girlfriend, § 87(2)(b) if she needed any help with her Metrocard. PO Holley later told PO Goode that § 87(2)(b) was having trouble with her Metrocard and PO Holley had asked her if she needed help. She told him no and he walked away.

Roll Call for Transit District 1

The 3rd platoon roll call (encl. 15 A-C) indicates that PO Holley and PO Goode were assigned to 1D18c.

Civilian Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CCRB History of Substantiated Cases

PO Holley has been a member of service for 6 years and during that time has never had any allegations substantiated against him at the CCRB (encl. 1 A).

Conclusions and Recommendations

Officer Identification

§ 87(2)(g), § 87(2)(b)

Undisputed Facts

It is undisputed that PO Holley approached § 87(2)(b) and initiated a brief conversation with her by the turnstiles. At some point after PO Holley entered the system, § 87(2)(b) tried to take a picture of him with a camera phone. In response, PO Holley used his hand to push § 87(2)(b)'s hand holding the camera phone away. § 87(2)(b) spoke to PO Holley and shortly thereafter the interaction ended and the officers went down to the platform.

Disputed Issues

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) PO Holley stated that he was surprised to find a camera phone in his face upon entering the system. § 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) had a verbal exchange with PO Holley before opening his camera phone. § 87(2)(b), § 87(2)(g)

Credibility

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

Determination of Fact

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

Allegation A. PO Levon Holley refused to provide his name and shield number to § 87(2)(b) § 87(2)(b), § 87(2)(g) [REDACTED]

Allegation B. PO Levon Holley spoke obscenely and rudely to § 87(2)(b) § 87(2)(b), § 87(2)(g) [REDACTED]

Allegation C. PO Levon Holley used physical force against § 87(2)(b) § 87(2)(b), § 87(2)(g) [REDACTED]

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: